

UNITED STATES DISTRICT COURT
for the
District of Nebraska

RYSTA LEONA SUSMAN, et al.

Plaintiff

v.

THE GOODYEAR TIRE & RUBBER COMPANY

Defendant

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)

Civil Action No. 8:18-cv-00127

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Kearney Towing & Repair Center Inc., Through Gary R. Behlmann
1303 East 22nd Street, Kearney, NE 68847

(Name of person to whom this subpoena is directed)

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See the attached Areas of Inquiry.

Place: Jacobsen Orr Lindstrom & Holbrook, P.C., L.L.O.
322 W. 39th Street
Kearney, NE 68848

Date and Time:

10/15/2019 11:00 am

The deposition will be recorded by this method: stenographic, audio, video and/or realtime transcription

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

All product service bulletins or similar documents relating to tire service life or tire aging from 2005-2015.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/18/2019

CLERK OF COURT

OR

/s/ Jennifer D. Tricker

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
THE GOODYEAR TIRE & RUBBER COMPANY _____, who issues or requests this subpoena, are:

Jennifer D. Tricker, Baird Holm LLP, 1700 Farnam St., Ste 1500, Omaha, NE 68102; jtricker@bairdholm.com; 402.344.0500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT

Exhibit 4

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

- (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit A to Notice of 30(b)(6) Deposition of Kearney Towing & Repair Center Inc

Areas of Inquiry

1. The scope of the business of Kearney Towing & Repair Center Inc.
2. The business relationship between Dandee Concrete Construction and Kearney Towing & Repair Center Inc from 2010 through 2015.
3. The service, maintenance, and repair provided to Dandee company vehicles generally, and specifically to the 2003 Chevrolet Silverado 1500 ½ ton truck, VIN: 1GCEC14X33Z115363 involved in the accident that is the subject of this lawsuit, specifically including the attached invoice for work performed on June 10, 2014.
4. Kearney Towing & Repair Center Inc.'s knowledge regarding tire service life and tire service life recommendations from tire or vehicle manufacturers from 2005 to the present.
5. Communications with Dandee Concrete Construction regarding the installation of the tires placed on the 2003 Chevrolet Silverado 1500 pickup involved in the accident that is the subject of this lawsuit by Kearney Towing on June 14, 2014 (invoice 91571).
6. The identity, including name and current address, of any service technician involved in the installation of the tires on June 14, 2014.
7. The identity of the service writer, including name and current address, for invoice 91571.
8. The identity of any technician, including name and current address, involved in service or maintenance on the tires installed on the 2003 Chevrolet Silverado 1500 pickup involved in the accident that is the subject of this lawsuit on June 14, 2014 from the date of installation to May 1, 2015, and the nature of any service work performed.
9. The use and service history of the tires installed on the 2003 Chevrolet Silverado 1500 pickup involved in the accident that is the subject of this lawsuit per invoice 91571 from the time the tires were placed in service up to the time they were installed on the 2003 Chevrolet Silverado 1500 in question.